

Message Text

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ACTION L-03

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MUNICH FOR CHARIG

E.O. 11652: N/A
TAGS: CPRS, PGOV, GW, US, GE
SUBJECT: OVERLAPPING CLAIMS

REFS: (A) STATE 306232 (NOTAL)
(B) STATE 33046 (NOTAL)
(C) STATE 41594 (NOTAL)
(D) STATE 44896

SUMMARY: US REPS MET WITH FRG FONOFF OFFICIALS FEBRUARY
23 TO DISCUSS SUBJECT CLAIMS AND CONVEY USG REQUEST
THAT FEDERAL GOVERNMENT WITHDRAW PENDING APPEALS FROM
BERLIN ADMINISTRATIVE COURT DECISION WHICH ORDERED
FEDERAL EQUALIZATION OFFICE TO TERMINATE STOP IN FINAL
PROCESSING OF US NATIONALS' CLAIMS BASED ON PROPERTY
LOSSES IN TERRITORY OF GDR. FRG REP EMPHASIZED WISH
OF FRG AUTHORITIES TO ENSURE THAT PAYMENTS FRG MAKES
DO NOT REDUCE CLAIMS RESPONSIBILITY OF GDR VIS-A-VIS
US, AND THAT US CLAIMANTS WHO HAVE RECOVERED FROM FRG
REPAY INTO FRG EQUALIZATION FUND THE AMOUNT THEY ARE
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OBLIGATED TO REPAY UNDER THE FRG LAW THAT ENTITLED THEM
TO THEIR EARLIER COMPENSATION FROM THAT FRG FUND. US
REPS DID NOT REACT FAVORABLY TO FRG REPS' PROBING ABOUT
POSSIBILITY OF ASSIGNMENTS, ON UNDERTAKING BY USG SUCH
AS SUGGESTED IN KATZENSTEIN LETTER OF OCTOBER 28, 1977,
STATING THAT INTER ALIA CONGRESSIONAL AUTHORIZATION
MIGHT BE REQUIRED, FOR HANDLING OF WHAT WAS RELATIVELY

SMALL NUMBER OF CASES. FRG REPS FINALLY EXPRESSED VIEW THAT PERHAPS GENERAL USG WRITTEN STATEMENT OF SUPPORT AND UNDERSTANDING FOR FRG INTEREST AND LEGAL REQUIREMENT FOR RECOVERY FROM DOUBLY COMPENSATED US CLAIMANTS OF REQUISITE PART OF THEIR SECOND RECOVERY AS RESULT OF EVENTUAL US-GDR CLAIMS AGREEMENT, MIGHT BE SUFFICIENT TO PERMIT FRG TO WITHDRAW APPEALS AND TERMINATE PROCESSING-STOP. EMBASSY BELIEVES THIS AVENUE IS WORTH EXPLORING FURTHER, IT HAVING BEEN MADE CLEAR THAT USG COULD NOT GUARANTEE THAT DOUBLY COMPENSATED US CLAIMANTS WOULD IN ALL CASES WILLINGLY SO REIMBURSE FRG EQUALIZATION FUND. END SUMMARY

1. EMBOFF AND CHARIG OF CONGEN MUNICH MET WITH FONOFF DEPUTY LEGAL ADVISER (VERBEEK) AND HEAD OF DESK IN FONOFF LEGAL SECTION CONCERNED WITH POST-WWII MATTERS (RUMPF) ON FEBRUARY 23. FONOFF REPS PREFERRED MEETING WITHOUT ATTENDANCE OF FINANCE MINISTRY OR FEDERAL EQUALIZATION OFFICE (BAA) REPS. EMBOFF AND CHARIG REVIEWED ENTIRE HISTORY OF STOP ON FINAL PROCESSING AND PAYMENT OF CLAIMS BY US NATIONALS UNDER FRG COMPENSATION LEGISLATION FOR CONFISCATIONS OF PROPERTY LOCATED IN THE TERRITORY OF THE GDR. THEY LEFT WITH FONOFF REPS A SET OF AVAILABLE CORRESPONDENCE BETWEEN THE EMBASSY AND THE /FRGG FINANCE MINISTRY, EMBASSY AND FONOFF, FEDERAL EQUALIZATION OFFICE AND LIMITED OFFICIAL USE

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FCSC, AND CONFERENCE ON JEWISH MATERIAL CLAIMS AGAINST GERMANY AND BAA. THEY ALSO LEFT COPY OF BERLIN ADMINISTRATIVE COURT DECISION IN FREYMUTH CASE AND SUBSEQUENT INTERVENTIONS OF THE REPRESENTATIVE OF THE INTERESTS OF THE EQUALIZATION FUND (EF) SEEKING RIGHT TO REVISION, FILING FOR REVISION, AND SEEKING EXTENSION TO SUPPORT REVISION WHICH HAS ALREADY BEEN GRANTED UNTIL MARCH 1978.

2. EMBOFF AND CHARIG NOTED THAT PROBABLY ONLY A FEW HUNDRED CASES OF DOUBLE COMPENSATION WILL ARISE IF AN EVENTUAL US-GDR CLAIMS SETTLEMENT AGREEMENT SHOULD BE REACHED, AND THAT THE BERLIN ADMINISTRATIVE COURT IN FREYMUTH CASE HAD CONSIDERED THE PROCESSING-STOP PREMATURE IN VIEW OF TENTATIVENESS OF POSSIBLE RECOVERY BASED ON UNCERTAIN US-GDR CLAIMS SETTLEMENT. EMBOFFS MADE REQUEST ALONQ LINES OF REFTELS A AND B, ASKING WHETHER FREYMUTH DECISION DID NOT FURNISH ADEQUATE BASIS

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FOR TERMINATING PROCESSING STOP, AND SUGGESTING THAT
EFFORT TO APPEAL FROM THAT DECISION WAS AN EXCESS OF
CAUTION THE EFFECT OF WHICH WOULD RESULT IN A DELAY OF
PAYMENT TO ELDERLY CLAIMANTS WHO THEMSELVES, RATHER
THAN THEIR HEIRS, AS THE PERSONS AFFECTED BY THE MEASURES
BEFORE AND AFTER 1945, SHOULD HAVE OPPORTUNITY TO ENJOY
COMPENSATION.

3. RUMPF STATED THAT HE WAS FAMILIAR WITH QUESTIONS
RAISED BY BAA PRESIDENT SCHAEFER WITH FCSC (BELL) AND
HAD SEEN THE RECENT REPLY BY FCSC GENERAL COUNSEL TO
SCHAEFER DATED FEBRUARY 7, 1978. RUMPF STATED THAT THE
FONOFF WOULD REPORT ON EMBASSY'S DEMARCHE TO THE FRG
FINANCE MINISTRY AND THE BAA. HE POINTED OUT, HOWEVER,
THAT UNDER DISCUSSION WAS COMPENSATION BY THE FRG FOR
PERSONS HARMED NOT BY ACTIONS OF THE FRG BUT RATHER BY
ACTIONS OF THE GDR. MOREOVER, GENEROUS FRG ACTION
HAD MADE IT POSSIBLE FOR FORMER GERMAN NATIONALS NOW
HAVING FOREIGN NATIONALITY AND NO LONGER LIVING IN
THE FRG TO QUALIFY FOR COMPENSATION FROM THE EF.
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(CHARIG HAD EARLIER MADE POINT THAT THE FRG EQUALIZATION

LAW WAS SO DRAFTED BY THE FRG LEGISLATURE AS TO PERMIT COMPENSATION OF FORMER GERMANS LIVING OUTSIDE OF THE FRG.) RUMPF SAID THE FRG INTEREST WAS NOT LIMITED MERELY TO AVOIDING DOUBLE COMPENSATION TO SOME CLAIMANTS BUT CAME ALSO FROM CONCERN THAT IF FRG COMPENSATION WERE TOO FREELY GIVEN, GDR COULD REFUSE VIS-A-VIS USG TO RECOGNIZE THE CLAIMS OF US NATIONALS ALREADY COMPENSATED BY THE FRG FOR PROPERTY CONFISCATED IN THE GDR. IT WAS NOT, OF COURSE, IN THE INTEREST OF THE FRG BY ITS PAYMENTS TO RELIEVE THE GDR OF THE LATTER'S OBLIGATION VIS-A-VIS THE US.

4. RUMPF THEN REFERRED TO EARLIER DISCUSSIONS BETWEEN HIM AND EMBOFF IN FALL 1977 ABOUT THE POSSIBILITY OF AN ADVANCE ASSIGNMENT BY US NATIONAL DOUBLE CLAIMANTS OF SUCH PORTION OF THEIR RECOVERY WITH RESPECT TO THE SAME PROPERTY AS THE RESULT OF A US/GDR CLAIMS SETTLEMENT, AS GERMAN LAW REQUIRES TO BE REIMBURSED INTO THE FRG EF. A SECOND PROPOSAL HAD BEEN ADVANCED BY BAA PRESIDENT SCHAEFER THAT THERE BE A GOVERNMENT-TO-GOVERNMENT AGREEMENT UNDER WHICH THE USG WOULD UNDERTAKE DIRECTLY TO PAY FROM EACH US NATIONAL DOUBLE CLAIMANT'S SHARE INTO THE EF THE AMOUNT OF REIMBURSEMENT REQUIRED BY GERMAN LAW. RUMPF PROPOSED THAT THE USG GIVE SERIOUS CONSIDERATION TO THE POSSIBILITY OF SUCH AN AGREEMENT. HE COULD, IN ANY EVENT, NOT SAY WHETHER IT WOULD BE POSSIBLE AS THE RESULT SOLELY OF THE U.S. DEMARCHE FOR THE FRG AUTHORITIES TO WITHDRAW THE APPEAL FROM THE DECISION IN THE FREYMUTH CASE AND TO DESIST FROM FILING FOR APPEAL FROM THE OTHER FIVE COURT RULINGS SIMILAR TO THE ONE IN THE FREYMUTH CASE. RUMPF STATED THAT HE BELIEVED THAT A US/FRG AGREEMENT WOULD LIMITED OFFICIAL USE

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BE THE BEST WAY TO DEAL WITH THE POSSIBILITY OF A US/GDR CLAIMS SETTLEMENT AND TO PERMIT PENDING US NATIONAL CLAIMS IN THE FRG TO BE PROCESSED WITHOUT FURTHER DELAY TO FINAL PAYMENT.

5. EMBOFF AND CHARIQ, WHILE MAKING CLEAR THAT THEY WERE NOT IN A POSITION TO COMMENT OFFICIALLY ON THE TWO ALTERNATIVES MENTIONED BY RUMPF, STATED THEY COULD PERCEIVE NUMEROUS LEGAL PROBLEMS FOR THE USG IN THE ASSIGNMENT OR AGREEMENT ALTERNATIVES. PARTICULARLY, IT APPEARED LIKELY THAT THE US CONGRESS WOULD NEED TO AUTHORIZE THE USG TO ACT AS WOULD BE NECESSARY UNDER THESE ALTERNATIVES. IN VIEW OF THE LIMITED NUMBER OF CASES AND THE RELATIVELY SMALL AMOUNT OF MONEY INVOLVED IN THESE CASES, AND IN VIEW OF THE DM 70-80 BILLION SO FAR PAID BY THE FRG IN COMPENSATION FOR PERSECUTEES, ANY

STEP REQUIRING CONGRESSIONAL ACTION FOR THESE CASES
COULD LEAVE AN UNFORTUNATE AFTER-TASTE DESPITE SIZEABLE
FRG GENEROSITY TO DATE.

6. RUMPF REACTED STRONGLY
STATING THAT THIS LINE OF ARGUMENT HAD BEEN
REPEATEDLY USED IN THE PAST BY JEWISH AND OTHER
INTEREST GROUPS IN THEIR EFFORTS TO URGE FURTHER FRG
GENEROSITY. WHILE HE UNDERSTOOD THAT ONLY A FEW HUNDRED
CASES OF DOUBLE COMPENSATION MIGHT BE INVOLVED, THERE
WAS A DISTINCT POSSIBILITY THAT IT WOULD BE DIFFICULT
FOR THE FRG TO OBTAIN REIMBURSEMENT INTO THE EF
DIRECTLY FROM SOME OF THE CLAIMANTS COMPENSATED OUT
OF THAT FUND AND SUBSEQUENTLY RECOVERING AS A RESULT
OF A US/GDR CLAIMS SETTLEMENT. WHILE HE AND VERBEEK

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WERE INTERESTED IN CHARIG'S DESCRIPTION OF A CASE YEARS
AGO IN NEW YORK STATE IN WHICH NORTH RHINE WESTPHALIA
HAD SUCCESSFULLY OBTAINED A US COURT JUDGMENT AGAINST
A CLAIMANT WHO HAD BEEN COMPENSATED ON THE BASIS OF
INFORMATION SUBSEQUENTLY PROVEN TO BE INACCURATE, THE
FRG DID NOT WISH TO BE FACED WITH THE ALTERNATIVE EITHER
OF PROTRACTED AND EXPENSIVE LITIGATION OF THIS KIND AT
SOME FUTURE TIME OR ACQUIESCING IN DOUBLE COMPENSATION
AT THE EXPENSE OF THE EF.

7. RUMPF THEN SPECULATED THAT IT MIGHT PROVE SUFFICIENT FOR FRG AUTHORITIES TO WITHDRAW THEIR APPEAL IN FREYMUTH AND NOT TO PURSUE APPEALS IN THE OTHER CASES IF THE USG WERE ABLE TO PROVIDE SOME FORM OF STATEMENT OF GOOD WILL RECOGNIZING THE NEED OF THE GERMAN AUTHORITIES TO OBTAIN REIMBURSEMENT INTO THE EF FROM THOSE COMPENSATED US CLAIMANTS WHO SUBSEQUENTLY ARE COMPENSATED WITH RESPECT TO THE SAME PROPERTY. PERHAPS A USG STATEMENT OF SUPPORT AND UNDERSTANDING FOR THE FRG NEED TO OBTAIN RECOVERY INTO THE EF OF THE REIMBURSEMENT REQUIRED UNDER LIMITED OFFICIAL USE

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FRG LAW COULD BE CONSIDERED ADEQUATE.

8. THE DISCUSSION THEN FOCUSSED ON SECTION 605 OF PL 94-542 UNDER WHICH IT APPEARS POSSIBLE THAT US CLAIMS AGAINST THE GDR MIGHT BE DIMINISHED IN RESPECT OF INDIVIDUAL CLAIMS BY THE AMOUNT OF COMPENSATION THAT THE CLAIMANT MAY HAVE RECEIVED FROM ANY OTHER SOURCE, INCLUDING THE FRG. THE FONOFF REPS ASKED TO BE PROVIDED WITH A CLARIFICATION WHETHER THE LANGUAGE OF SECTION 605 COULD OR WOULD BE INTERPRETED IN THIS MANNER, WHICH WOULD APPEAR TO HAVE THE EFFECT OF BENEFITING THE GDR BY REASON OF COMPENSATION PAYMENTS RECEIVED BY CLAIMANTS FROM THE FRG. THEY ASKED FURTHERMORE WHETHER THE LANGUAGE OF THIS SECTION DID NOT ALREADY PROVIDE THE BASIS FOR THE USG TO WITHHOLD FROM THE CLAIMANTS ENTITLED TO COMPENSATION UNDER A US/GDR CLAIMS SETTLEMENT AN AMOUNT EQUAL TO THE AMOUNT THEY HAVE ALREADY RECEIVED FROM THE FRG WITH RESPECT TO THE SAME PROPERTY. SHOULD THIS BE SO, WOULD NOT UP TO THE AMOUNT SO WITHHELD BE TRANSFERABLE TO THE FRG EF IN FULFILLMENT OF THE REIMBURSEMENT REQUIREMENTS OF GERMAN LAW?

9. THE DISCUSSION CLOSED AFTER THE US REPS POINTED OUT THAT AFTER THE MAY 15 DEADLINE FOR THE FILING WITH THE FCSC OF CLAIMS FOR PROPERTY CONFISCATED IN THE GDR IT WOULD BE POSSIBLE TO DETERMINE WHICH PENDING US NATIONAL CLAIMS IN GERMANY WERE ALSO THE SUBJECT OF CLAIMS REGISTERED WITH THE FCSC. THIS PROCESS WILL PERMIT BOTH SIDES TO IDENTIFY THOSE CLAIMS PENDING BEFORE GERMAN COMPENSATION AUTHORITIES WHICH ARE NOT REPEAT NOT ALSO THE SUBJECT OF TIMELY CLAIMS FILED WITH THE FCSC. AS SUCH CLAIMANTS WOULD NOT HAVE ANY ENTITLEMENT UNDER AN EVENTUAL US/GDR CLAIMS AGREEMENT, THERE WOULD BE NO LIMITED OFFICIAL USE

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VALID REASON FOR THE FRG COMPENSATION AUTHORITY-
TIES TO IMPOSE OR MAINTAIN ANY PROCESSING-STOP WITH
RESPECT TO SUCH CLAIMS.

10. COMMENT: WE BELIEVE THAT RUMPF'S SPECULATION ON
THE POSSIBLE ACCEPTABILITY OF A "BEST EFFORTS" STATEMENT
BY THE USG WITH RESPECT TO FRG REQUIREMENTS TO OBTAIN
REIMBURSEMENT INTO THE EF FROM THE INDIVIDUAL
CLAIMANTS OF THE AMOUNT REQUIRED UNDER FRG LAW, MAY

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REPRESENT A REAL POSSIBILITY FOR RESOLUTION OF THIS
PROBLEM. WHILE SUCH "BEST EFFORTS" MIGHT HAVE TO BE
SHORT OF ANY COMMITMENT TO PROVIDE LEGAL SERVICES TO
THE FRG AUTHORITIES AT NO COST IN THEIR EFFORTS TO SEEK
REIMBURSEMENT OR SUBMISSION BY THE USG OF A "STATEMENT
OF INTEREST" OR AMICUS BRIEF IN SUPPORT OF FRG REIM-
BURSEMENT EFFORTS, THE EMBASSY BELIEVES THAT THIS
POSSIBILITY SHOULD BE FULLY STUDIED. THE EMBASSY
REQUESTS TO BE PROVIDED WITH ALTERNATIVE FORMULATIONS
THAT IT COULD DISCUSS WITH THE FONOFF IN AN EFFORT TO
REACH MUTUAL AGREEMENT ON THE TEXT OF A POSSIBLE NOTE
FROM THE EMBASSY TO THE FONOFF PROVIDING A STATEMENT

OF SUPPORT ALONG THESE LINES.

11. WE BELIEVE THAT A PROPOSAL AS EXTREME AS THE ONE CONTEMPLATED IN PARA 2 OF REFTEL D IS NOT JUSTIFIED, PARTICULARLY SO LONG AS A STATEMENT OF SUPPORT AS DISCUSSED IN PARAS 7 AND 10 MAY PROVE ADEQUATE TO MEET FRG CONCERNS. THIS IS PARTICULARLY TRUE AS THE PROPOSED US LEGISLATION DESCRIBED IN REFTEL D WOULD BAR US NATIONAL CLAIMANTS LIMITED OFFICIAL USE

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FROM THE RIGHT OF COMPENSATION BY REASON OF A US/GDR CLAIMS SETTLEMENT. IT WOULD BE SEEN TO BE AN EFFORT TO PRESSURE THE FRG ALONE INTO PAYING COMPENSATION FOR THE ACTS OF THE GDR, A PRESSURE THAT WOULD, IN OUR VIEW, BE COUNTER-PRODUCTIVE. FINALLY, THE AMOUNT OF REIMBURSEMENT INTO THE EF REQUIRED BY FRG LAW WOULD PROBABLY NOT BE AS GREAT AS THE AMOUNT OF COMPENSATION PREVIOUSLY PAID OUT OF THAT FUND TO THE US DOUBLE CLAIMANT. EMBASSY SUGGESTS THAT BEFORE ANY PROPOSAL AS DESCRIBED IN PARAGRAPH 2 OF REFTEL D IS PROPOSED TO ANY MEMBER OF CONGRESS OR SUPPORTED BY THE DEPARTMENT, THE DEPARTMENT ENSURE THAT THERE IS FULL UNDERSTANDING OF THE SCOPE OF REIMBURSEMENT INTO THE EF THAT IS REQUIRED UNDER FRG LAW. CHARIG IN MUNICH IS IN THE BEST POSITION TO SHED LIGHT ON THIS QUESTION.

13. ACTION REQUESTED: DEPARTMENT'S GUIDANCE AND SUGGESTIONS FOR ALTERNATIVE POSSIBLE STATEMENTS OF SUPPORT TO BE DISCUSSED BY THE EMBASSY WITH THE FONOFF, AND REPLIES TO THE FRG QUESTIONS CONCERNING THE PURPOSE, MEANING AND OPERATION OF SECTION 605 OF PL 94-542.
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